

Updated 9/7/2022

1000 *** Bill No. ***

Introduced By *****

By Request of the (Agency or Department)

WHEREAS, Mont. Const. art. VII, § 1 provides that the "judicial power of the state is vested in one supreme court, district courts, justice courts, and such other courts as may be provided by law;"

WHEREAS, the legislature possesses the authority to constitute a Water Court and similarly set forth mechanisms for the appointment and election of judges for said court;

WHEREAS, neither the Water Court nor its judgeships are mandated or created by the Montana Constitution but are, rather, judgeships maintained by the Montana legislature;

A Bill for an Act entitled: "An Act Providing for the Continuation of the Montana Water Judges of the Water Divisions; amending sections **XX; amending section 3-7-301, MCA; amending sections 3-7-404 and 3-7-501, MCA**."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-1-101, MCA, is amended to read:

"3-1-101. The several courts of this state. The following are courts of justice of this state:

- (1) the court of impeachment, which is the senate;
- (2) the supreme court;
- (3) the district courts;

(4) the municipal courts;

(5) the justices' courts;

(6) the Water Court

~~(6)~~ (7) the city courts and such other courts of limited jurisdiction as the legislature may establish in any incorporated city or town."

{Internal References to 3-1-101:
3-1-803}

Section 2. Section 3-1-901, MCA, is amended to read:

"3-1-901. Judicial vacancy -- notice. (1) (a) Upon receiving notice from the chief justice of the supreme court, the governor shall appoint a candidate, as provided in this part, to fill any vacancy on the supreme court or the district court.

(b) The governor ~~chief justice of the supreme court~~ shall appoint a candidate to fill any water judge term or vacancy ~~for the chief water judge or associate water judge~~ pursuant to 3-7-221.

(2) Within 10 days of the date of receipt by the governor of the notice from the chief justice of the supreme court that a vacancy has occurred or the effective date of a judicial resignation has been announced, the governor shall notify the public, including media outlets with general

statewide circulation and other appropriate sources, that a vacancy has been announced, including the deadline within which applications must be received."

{Internal References to 3-1-901: None}

Section 3. Section 3-1-905 , MCA, is amended to read:

"3-1-905. Appointments. (1) The governor~~, or the chief justice of the supreme court for the office described in 3-7-221,~~ shall make an appointment within 30 days of the close of the public comment period from the list of applicants.

(2) For purposes of Article VII, section 8, of the Montana constitution, the governor must be construed to receive the names of the nominees at the close of the public comment period provided for in 3-1-904.

(3) If the governor fails to appoint within 30 days of the close of the public comment period provided for in subsection (1), the chief justice shall make the appointment from the same list of applicants within 30 days of the governor's failure to appoint."

{Internal References to 3-1-905: None}

Section 4. Section 3-7-101 , MCA, is amended to read:

"3-7-101. Power and Duties of the Water Court ~~Water divisions.~~ To adjudicate existing water rights and to

~~conduct hearings in cases certified under 85-2-309, water divisions are established as defined in 3-7-102. A water division shall be presided over by one or more a water judges. Water judges of the Water Court shall:~~

(1) Prior to the issuance of a final decree in a given basin pursuant to 85-2-234 and 235, administer the adjudication of existing water rights in that basin by:

(a) coordinating with the department of natural resources and conservation in compiling information submitted on water claim forms under Title 85, chapter 2, part 2, to ensure that the information is expeditiously and properly compiled and transferred to the water judge in each water division; and

(b) ensure that any contested or conflicting claims are tried and adjudicated as expeditiously as possible.

(2) conduct proceedings for petitions for judicial review filed with the Water Court under 2-4-702;

(3) review decisions made by any compact board or other administrative entity as provided pursuant to Title 85, Chapter 20;

(4) review motions brought pursuant to Rule 59 or Rule 60 of Montana Rules of Civil Procedure concerning the adjudication of an existing water right and petitions pursuant to 85-2-234(8);

(5) address disputes arising under the interpretation of a final decree issued under 82-2-234;

(6) address judicial enforcement actions brought pursuant to 85-2-114 and 85-2-122;

(7) address enforcement actions brought pursuant to common law remedies including but not limited to the waste of water, unlawful use of water, or interference with the use of water, including the right to injunctive relief under Title 27, chapter 19;

(8) conduct abandonment proceedings raised under 85-2-404 and 85-2-405;

(9) address matters certified under 85-2-309;

(10) address matters certified under 85-2-424(9)

(11) address water distribution controversies under 85-2-406;

(12) appoint and supervise water commissioners or water mediators under Title 85, chapter 5;

(13) address ditch easement matters ancillary to a water right dispute or controversy, as water right is defined in 85-2-102.

(14) promulgate special rules, for the use across all divisions, of practice and procedure and shall prescribe forms for use in connection with this chapter; and

(15) determine and interpret existing water rights including, without limitation, the adjudication of total or partial abandonment of existing water rights occurring at any time."

{Internal References to 3-7-101: None}

NEW SECTION. Section 5. Office of the Water Court.

There is established a single office of the Water Court that shall be comprised of a Water Court administrator and all such personnel as may be necessary for the Water Court administrator to carry out their duties.

(1) In addition to keeping the records and performing the duties prescribed elsewhere in this chapter, the Water Court Administrator shall have the same duties as a clerk of district court as set forth in Title 3, Chapter 5, Part 5.

(2) Any reference in this chapter to a filing in the Water Court or with a Water Judge shall mean a filing in the Office of the Water Court.

"3-7-102. Water Court divisions boundaries. There are four water divisions whose boundaries are formed by the natural divides between drainages and the borders of the state of Montana and which are described as follows:

(1) The Yellowstone River basin water division consists of those areas drained by the Yellowstone and Little Missouri Rivers and any remaining areas in Carter County.

(2) The lower Missouri River basin water division consists of those areas drained by the Missouri River from below the mouth of the Marias River and any remaining areas in Glacier and Sheridan Counties.

(3) The upper Missouri River basin water division consists of those areas drained by the Missouri River to below the mouth of the Marias River.

(4) The Clark Fork River basin water division consists of the areas drained by the Clark Fork River, the Kootenai River, and any remaining areas in Lincoln County."

{Internal References to 3-7-102:
3-7-101 3-7-501 85-2-102}

Section 6. Section 3-7-103 , MCA, is amended to read:

"3-7-103. Promulgation of rules and prescription of forms

-- advisory committee. (1) As soon as practicable the Montana supreme court may promulgate special rules of practice and procedure and shall prescribe forms for use in connection with 3-7-101(1)~~this chapter~~ and Title 85, chapter 2, parts 2 and 7, in consultation with the chief water judge and the department of natural resources and conservation.

(2) (a) The chief water judge shall appoint a water adjudication advisory committee to provide recommendations to the water court, the Montana supreme court, the department of natural resources and conservation, and the legislature on methods to improve and expedite the water adjudication process.

(b) The committee consists of three nongovernmental attorneys who practice before the water court, one district court judge, and three water users who have filed

statements of claim with the department of natural resources and conservation under this chapter.

(c) The chief water judge or the judge's designee shall serve as an ex officio member of the committee. The Montana supreme court may appoint the attorney general or the attorney general's designee, a representative from the department of natural resources and conservation, and a representative of the United States government as ex officio members of the committee.

(d) The committee members shall serve at the pleasure of the water court and shall serve without compensation.

(e) The committee shall file a report with the Montana supreme court by October 1, 1996, and as often as determined by the Montana supreme court."

{Internal References to 3-7-103: None}

Section 7. Section 3-7-201 , MCA, is amended to read:

"3-7-201. Designation of water judge. (1) A water judge must be designated for each water division pursuant to 3-7-221. ~~by a majority vote of a committee composed of the district court judge from each single-judge judicial district and the chief district judge from each multijudge judicial district, wholly or partly within the division. Except as provided in subsection (2), a water judge must be~~

~~a district court judge or retired district court judge of a judicial district wholly or partly within the water division.~~

~~(2) A district court judge or retired district court judge may sit as a water judge in more than one division if requested by the chief justice of the supreme court or the water judge of the division in which the judge is requested to sit.~~

(23) A water judge, when presiding over a water division, has the power of a ~~presides as~~ district court judge in and for each judicial district wholly or partly within the water division."

{Internal References to 3-7-201:
3-7-202 3-7-203 3-7-501}

Section 8. Section 3-7-202 , MCA, is amended to read:

"3-7-202. Term of office. Upon election pursuant to 13-14-212, the term of a water judge is six years. ~~The term of office for water judges is from the date of initial appointment as provided in 3-7-201 to June 30, 1985. After June 30, 1985, the term of office of a water judge is 4 years, subject to continuation of the water divisions by the legislature.~~"

{Internal References to 3-7-202: None}

Section 9. Section 3-7-203 , MCA, is amended to read:

"3-7-203. Vacancies. (1)If a vacancy in the office of water judge occurs, it must be filled in the manner provided in 3-1-901(b). ~~-7-201 for the initial designation of a water judge. A vacancy is created when a water judge dies, resigns, retires, is not elected to a subsequent term, forfeits the judicial position, is removed, or is otherwise unable to complete the term as a water judge.~~

(a) Each appointment made pursuant to 3-1-901(b) and 905 must be confirmed by the senate. An appointment made while the senate is not in session is effective until the end of the next regular legislative session.

(b) Prior to the issuance of all final decrees pursuant to 85-2-234 and 235, and after appointment and confirmation, a water judge is subject to state-wide retention election to be held on the next general election day in an even-numbered year pursuant to 13-14-212.

(c) After the issuance of all final decrees pursuant to 85-2-234 and 235, and after appointment and confirmation, a water judge is subject to retention election to be held on the next general election day in an

even-numbered year within his or her assigned water division pursuant to 13-14-212.

(2) A vacancy is created when a water judge dies, resigns, retires, is not elected to a subsequent term, forfeits the judicial position, is removed, or is otherwise unable to complete the term as a water judge."

{Internal References to 3-7-203: None}

Section 10. Section 3-7-204 , MCA, is amended to read:

"3-7-204. Supervision and administration by supreme court. (1) The Montana supreme court shall supervise the activities of the water judges, ~~water masters,~~ and associated Water Court personnel in implementing this chapter and Title 85, chapter 2, part 2.

(2) The supreme court shall pay the salaries and expenses of the water judges and associated Water Court personnel. ~~the salaries and expenses of the water judges' staffs and the salaries and expenses of the water masters and the water masters' staffs, from appropriations made for that purpose. "Salaries and expenses" as used in this section include but are not limited to the salaries and expenses of personnel, the cost of office equipment and office space, and other necessary expenses that may be incurred in the~~

~~administration of this chapter and Title 85, chapter 2,~~
~~part 2.~~

(3) The water judges must receive the same salary and expense allowance as provided for district judges in 3-5-211.

(4) The office of the Water Court, as defined in [New Section], must be at the location designated by the chief justice of the Montana supreme court. The Montana supreme court shall provide in its budget for the salary, expenses, and office and staff requirements of the chief water judge and the associate water judges. Money may be appropriated by the legislature from the general fund for these purposes. "

*{Internal References to 3-7-204:
85-2-112}*

Section 11. Section 3-7-211 , MCA, is amended to read:

"3-7-211. Appointment of water commissioners. (1) Except as provided in 85-20-1902, the water judge having jurisdiction over the water division ~~district court having jurisdiction over the hydrologically interrelated portion of a water division, as described in 85-2-231(3),~~ in which the controversy arises may appoint and supervise a water commissioner as provided for in Title 85, chapter 5.

(2) Upon receiving a petition for a water commissioner under Title 85, chapter 5, that:

(a) seeks the appointment of a water commissioner that would act wholly within a single judicial district, and

(b) wherein the petition requests to have the district court judge appoint and supervise a water commissioner;

the water judge having jurisdiction over the water division in which the judicial district is situated may transfer the petition to the applicable district court judge who shall be sitting as a water division judge protempore in that matter. "

{Internal References to 3-7-211: None}

Section 12. Section 3-7-212 , MCA, is amended to read:

"3-7-212. Enforcement of decrees. The water judge ~~district court~~ having jurisdiction over the applicable water division shall ~~may~~ enforce the provisions of a final decree within that water division. In the absence of any final decree having been issued, the water judge ~~district court~~ having jurisdiction over the water division may enforce the provisions of a temporary preliminary decree, preliminary decree, or supplemental preliminary decree entered under 85-2-231, as modified by a water judge after objections and hearings."

{Internal References to 3-7-212: None}

Section 13. Section 3-7-221 , MCA, is amended to read:

"3-7-221. Appointment of ~~chief water judge and associate water judges~~ -- terms of office. (1) prior to the issuance of all final decrees and appeals therefrom, pursuant to 85-2-234 and 85-2-235:

(a) Water judges serving upon [the effective date of this Act] shall serve the remainder of their term in the divisions to which they are assigned. Upon expiration of their terms, the governor shall fill the vacancies in accordance with 3-7-203.

(b) The ~~Governor~~ ~~chief justice of the Montana supreme court~~ shall appoint a chief water judge as provided in Title 3, chapter 1, part 9. The ~~chief justice of the Montana supreme court~~ may appoint additional ~~an~~ associate water judges.

(c) In order to exercise their duties in section 3-7-101(1), the governor must assign each water Judge to one or more water divisions.

(d) The governor shall designate 1 water judge to be the chief water judge.

(2) After the issuance of all final decrees and all appeals therefrom, pursuant to 85-2-234 and 235, and after the Chief Water Judge certifies to the Governor's office

and the Montana Supreme Court that all final decrees have
been issued:

- (a) The governor shall assign sitting water judges to a
division for the remainder of their term.
- (b) The governor may appoint additional water judge to
each of the remaining water divisions to serve as
that division's judge. The governor may appoint
additional water judges to any division as needed
thereafter.
- (c) The governor shall designate 1 water judge to be the
chief water judge.
- (d) Water judges need not be a resident of the water
division of which the judge is appointed at the time
of appointment, but after appointment, the water
judge must reside in the water division for which
the judge is appointed during the judges' term of
office.

~~+(2)~~ (3) To be eligible for the office of ~~chief water judge~~
~~or associate water judge~~, a person shall have the
qualifications for district court or supreme court judges
found in Article VII, section 9, of the Montana
constitution.

~~(3) The term of office of the chief water judge and the associate water judge is 4 years, subject to continuation of the water divisions by the legislature."~~

~~{Internal References to 3-7-221:
3-1-1001 3-1-1011 19-5-301 85-2-705}~~

Section 14. Section 3-7-222 , MCA, is amended to read:

"3-7-222. Salary -- office space. ~~(1) The chief water judge and the associate water judge must receive the same salary and expense allowance as provided for district judges in 3-5-211.~~

~~(2) The office of the chief water judge and the associate water judge must be at the location designated by the chief justice of the Montana supreme court. The Montana supreme court shall provide in its budget for the salary, expenses, and office and staff requirements of the chief water judge and the associate water judge. Money may be appropriated by the legislature from the general fund for these purposes."~~

~~{Internal References to 3-7-222:
19-5-101}~~

Section 15. Section 3-7-223 , MCA, is amended to read:

"3-7-223. (Temporary) Duties of chief water judge. ~~The chief water judge shall:~~

~~(1) administer the adjudication of existing water rights by:~~

~~(a) coordinating with the department of natural resources and conservation in compiling information submitted on water claim forms under Title 85, chapter 2, part 2, to ensure that the information is expeditiously and properly compiled and transferred to the water judge in each water division;~~

~~(b) ensuring that the water judge in each water division moves without unreasonable delay to enter the required preliminary decree; and~~

~~(c) ensuring that any contested or conflicting claims are tried and adjudicated as expeditiously as possible;~~

~~(2) conduct hearings in cases certified to the district court under 85-2-309;~~

~~(3) conduct proceedings for petitions for judicial review filed with the water court under 2-4-702;~~

~~(4) assign court personnel to divisions and duties as needed;~~

~~(5) assign the associate water judge to divisions and cases as needed; and~~

~~(6) request and secure the transfer of water judges between divisions as needed. (Terminates September 30, 2025 sec. 6, Ch. 126, L. 2017.)~~

3-7-223. ~~(Effective October 1, 2025)~~ **Duties of chief water judge.** The duties of the chief water judge shall be to provide for the efficient management of the water division court business in cooperation with the other water judges and the Water Court administrator and assign Water Court personnel to divisions and duties as needed.

~~(1) administer the adjudication of existing water rights by:~~

~~(a) coordinating with the department of natural resources and conservation in compiling information submitted on water claim forms under Title 85, chapter 2, part 2, to assure that the information is expeditiously and properly compiled and transferred to the water judge in each water division;~~

~~(b) assuring that the water judge in each water division moves without unreasonable delay to enter the required preliminary decree;~~

~~(c) assuring that any contested or conflicting claims are tried and adjudicated as expeditiously as possible;~~

~~(2) conduct hearings in cases certified to the district court under 85-2-309;~~

~~(3) assign court personnel to divisions and duties as needed;~~

~~(4) assign the associate water judge to divisions and cases as needed; and~~

~~(5) request and secure the transfer of water judges between divisions as needed."~~

*{Internal References to 3-7-223:
3-7-225}*

Section 16. Section 3-7-224 , MCA, is amended to read:

"3-7-224. (Temporary) Jurisdiction of chief water judge and associate water judges. ~~(1) The chief water judge and the associate water judge may, at the discretion of the chief justice of the Montana supreme court, also serve as water judge for one of the water divisions.~~

~~(2) The chief water judge and the associate water judge have jurisdiction over cases certified to the district court under 85-2-309, all matters relating to the determination of existing water rights within the boundaries of the state of Montana, and all petitions for judicial review filed with the water court under 2-4-702.~~

~~(1) (3) With regard to the consideration of a matter within the chief water judge's jurisdiction, the chief water judge and the associate water judge have the same~~

~~powers as a district court judge. The chief water judge and the associate water judge may issue orders, on the motion of an interested party or on the judge's own motion, that may reasonably be required to allow the judge to fulfill the judge's responsibilities, including but not limited to requiring the joinder of persons not parties to the administrative hearing being conducted by the department pursuant to 85-2-309 or 85-2-402 as considered necessary to resolve any factual or legal issue certified pursuant to 85-2-309(2). (Terminates September 30, 2025--sec. 6, Ch. 126, L. 2017.)~~

3-7-224. ~~(Effective October 1, 2025)~~ **Jurisdiction of chief water judge and associate water judge.** ~~(1) The chief water judge and the associate water judge may, at the discretion of the chief justice of the Montana supreme court, also serve as water judge for one of the water divisions.~~

~~(2) The chief water judge and the associate water judge have jurisdiction over cases certified to the district court under 85-2-309 and all matters relating to the determination of existing water rights within the boundaries of the state of Montana.~~

(1)~~(3)~~ With regard to the consideration of a matter within the chief water judge's jurisdiction, the chief

water judge and the associate water judges have the same powers as a district court judge. The chief water judge and the associate water judges may issue orders, on the motion of an interested party or on the judge's own motion, that may reasonably be required to allow the judge to fulfill the judge's responsibilities, including but not limited to requiring the joinder of persons not parties to the administrative hearing being conducted by the department pursuant to 85-2-309 or 85-2-402 as considered necessary to resolve any factual or legal issue certified pursuant to 85-2-309(2).

(2) Water Court, through the chief water judge and associate water judges, shall administer and enforce all final decrees it issues pursuant to the terms of said decree."

{Internal References to 3-7-224:

85-20-601 85-20-901 85-20-1001 85-20-1501
85-20-1901}

Section 17. Section 3-7-225 , MCA, is amended to read:

"3-7-225. (Temporary) Duties of associate water judge.

~~The duties of the associate water judge are the same as those assigned to the chief water judge pursuant to 3-7-~~

~~223(1) through (3). (Terminates September 30, 2025--sec. 6, Ch. 126, L. 2017.)~~

3-7-225. *(Effective October 1, 2025)* **Duties of associate water judge.** ~~The duties of the associate water judge are the same as those assigned to the chief water judge pursuant to 3-7-223(1) and (2)."~~

{Internal References to 3-7-225: None}

Section 18. *Section 3-7-301, MCA, is amended to read:*

"3-7-301. Appointment of water masters -- removal. (1)

~~The chief water judge or the~~ A water judge in each water division may appoint one or more water masters when enacting the duties of 3-7-101(1).

~~(2) A water master may be appointed after July 1, 1980, and must be appointed on or before July 1, 1982.~~

(2)~~(3)~~ In appointing a water master, a~~the~~ water judge shall consider a potential master's experience with water law, water use, and water rights.

~~(3)~~(4) A water master shall serve at the pleasure of the ~~chief water judge~~ who appointed the water master and may be removed by the ~~chief water judge~~.

~~(5) A water master may serve in any water division and may be moved among the water divisions at the discretion of the chief water judge."~~

{Internal References to 3-7-301: None}

Section 19. *Section 3-7-311, MCA, is amended to read:*

"3-7-311. Duties of water masters. (1) The water master has the general powers given to a master by Rule 53(c), M.R.Civ.P.

~~(2) Within a reasonable time after June 30, 1983, the water master shall issue a report to the water judge meeting the requirements for the preliminary decree as specified in 85-2-231.~~

~~(2) (3) After a water judge issues a preliminary decree,~~
the The water master shall assist the water judge in the performance of the water division's further duties under 3-7-101(1) as ordered by the water judge.

~~(4) A water master may be appointed by a district court to serve as a special master to a district court for actions brought pursuant to 85-2-114(1) or (3) or 85-5-301 if the appointment is approved by the chief water judge."~~

{Internal References to 3-7-311: None}

Section 20. *Section 3-7-401, MCA, is amended to read:*

"3-7-401. Definitions. For the purposes of this part, the following definitions apply:

(1) "Fiduciary" includes such relationships as executor, administrator, trustee, or guardian.

(2) "Financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

(a) ownership in a mutual or common investment fund that holds securities is not a financial interest in such securities unless the judge or water master participates in the management of the fund;

(b) an office in an educational, religious, charitable, fraternal, or civic organization is not a financial interest in securities held by the organization;

(c) the proprietary interest of a policyholder in a mutual insurance company or a depositor in a mutual savings association or a similar proprietary interest is a financial interest in the organization only if the outcome of the proceeding could substantially affect the value of the interest; and

(d) ownership of government securities is a financial interest in the issuer only if the outcome of the

proceeding could substantially affect the value of the securities.

(3) "Proceeding" includes prehearing, hearing, appellate review, or other stages of adjudication conducted by the water master or water judge."

{Internal References to 3-7-401: None}

Section 21. Section 3-7-501 , MCA, is amended to read:

"3-7-501. Jurisdiction. The Water Court has exclusive jurisdiction of the determination and interpretation of cases and controversies under 3-7-101, except provided for in law. ~~(1) The jurisdiction of each judicial district concerning the determination and interpretation of cases certified to the court under 85-2-309 or of existing water rights is exercised exclusively by it through the water division or water divisions that contain the judicial district wholly or partly.~~

~~(2) A water judge may not preside over matters concerning the determination and interpretation of cases certified to the court under 85-2-309 or of existing water rights beyond~~

~~the boundaries specified in 3-7-102 for the judge's division except as provided in 3-7-201.~~

~~(3) The water judge for each division shall exercise jurisdiction over all matters concerning cases certified to the court under 85-2-309 or concerning the determination and interpretation of existing water rights within the judge's division as specified in 3-7-102 that are considered filed in or transferred to a judicial district wholly or partly within the division.~~

~~(4) The determination and interpretation of existing water rights includes, without limitation, the adjudication of total or partial abandonment of existing water rights occurring at any time before the entry of the final decree."~~

{Internal References to 3-7-501: None}

Section 22. *Section 3-7-501, MCA, is amended to read:*

"3-7-501. Jurisdiction. (1) The jurisdiction of each judicial district concerning the determination and interpretation of matters ~~of cases certified to the court under 3-7-101 85-2-309 or of existing water rights is~~ exercised exclusively by the Water Court it through the

water division or water divisions that contain the judicial district wholly or partly.

(2) A water judge may not preside over matters concerning the determination and interpretation of matters under 3-7-101 ~~concerning the determination and interpretation of cases certified to the court under 85-2-309 or of existing water rights~~ beyond the boundaries specified in 3-7-102 for the judge's division except as provided in 3-7-201.

(3) The water judge for each division shall exercise jurisdiction over all matters concerning ~~cases certified to the court under 3-7-101 85-2-309 or concerning the determination and interpretation of existing water rights~~ within the judge's division as specified in 3-7-102 that are considered filed in or transferred to a judicial district wholly or partly within the division.

(4) The determination and interpretation of existing water rights includes, without limitation, the adjudication of total or partial abandonment of existing water rights occurring at any time before the entry of the final decree."

{Internal References to 3-7-501: None}

Section 23. *Section 3-7-502, MCA, is amended to read:*

"3-7-502. Jurisdictional disputes. Whenever a question arises concerning which water judge shall preside over ~~adjudication of a matter concerning a case that could be heard in more than one water division certified to the court under 85-2-309 or the determination and interpretation of existing water rights,~~ the question shall be settled by the chief water judges involved."

{Internal References to 3-7-502: None}

NEW SECTION. **Section 24. in TITLE 3, Ch 7]. Venue for water right determinations.** All matters concerning the determination and interpretation of ~~existing water rights~~ of matters under 3-7-101 shall be brought before, or immediately transferred to, the water judge in the proper water division. ~~unless witnesses have been sworn and testimony has been taken by a district court prior to the date of the Montana supreme court order as provided in 85-2-212.~~

Section 25. *Section 85-2-112, MCA, is amended to read:*

"85-2-112. Department duties. The department shall:

(1) enforce and administer this chapter and rules adopted under 85-2-113, subject to the powers and duties of the supreme court under 3-7-204;

(2) prescribe procedures, forms, and requirements for applications, permits, certificates, claims of existing rights, and proceedings under this chapter and prescribe the information to be contained in any application, claim of existing right, or other document to be filed with the department under this chapter not inconsistent with the requirements of this chapter;

(3) establish and keep in its Helena office a centralized record system of all existing rights and a public record of permits, certificates, claims of existing rights, applications, and other documents filed in its office under this chapter;

(4) cooperate with, assist, advise, and coordinate plans and activities with the federal, state, and local agencies in matters relating to this chapter;

(5) upon request by any person, cooperate with, assist, and advise that person in matters pertaining to measuring water or filing claims of existing rights with the Water Court ~~a district~~ court under this chapter;

(6) adopt rules necessary to reject, modify, or condition permit applications in highly appropriated basins or subbasins as provided in 85-2-319."

{Internal References to 85-2-112:
15-7-308}

Section 26. *Section 85-2-114, MCA, is amended to read:*

"85-2-114. Judicial enforcement. (1) If the department ascertains, by a means reasonably considered sufficient by it, that a person is wasting water, using water unlawfully, preventing water from moving to another person having a prior right to use the water, or violating a provision of this chapter, it may petition the Water Court ~~district court supervising the distribution of water among appropriators from the source to:~~

(a) regulate the controlling works of an appropriation as may be necessary to prevent the wasting or unlawful use of water or to secure water to a person having a prior right to its use;

(b) order the person wasting, unlawfully using, or interfering with another's rightful use of the water to cease and desist from doing so and to take steps that may be necessary to remedy the waste, unlawful use, or interference; or

(c) issue a temporary, preliminary, or permanent injunction to prevent a violation of this chapter. Notwithstanding the provisions of Title 27, chapter 19, part 3, a temporary restraining order must be granted if it clearly appears from the specific facts shown by affidavit or by the verified complaint that a provision of this chapter is being violated.

(2) Upon the issuance of an order or injunction, the department may attach to the controlling works a written notice, properly dated and signed, setting forth the fact that the controlling works have been properly regulated by it. The notice constitutes legal notice to all persons interested in the appropriation or distribution of the water.

(3) The department may also direct its own attorney or request the attorney general or county attorney to bring suit to enjoin the waste, unlawful use, interference, or violation.

(4) The county attorney or the attorney general may bring suit to enjoin the waste, unlawful use, interference, or violation or bring an action under 85-2-122(1) without being requested to do so by the department.

(5) A county attorney who takes action pursuant to subsection (3) or (4) may request assistance from the attorney general.

(6) When enforcing the provisions of this section, the department, the county attorney, and the attorney general shall give priority to protecting the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation.

(7) After considering the provisions of subsection (6), the department may attempt to obtain voluntary compliance through warning, conference, or any other appropriate means before petitioning the water ~~district~~-court under subsection (1). An attempt to obtain voluntary compliance under this subsection must extend over a period of at least 7 days and may not exceed 30 working days.

(8) Pursuant to 85-20-1902, the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation.

(9) The provisions of this section do not limit a water right owner from seeking relief, including injunctive relief, in the water ~~district~~-court under Title 27, chapter 19, or this chapter."

{Internal References to 85-2-114:

3-7-311	44-4-1101	44-4-1102	85-2-122
85-2-381	85-2-427}		

Section 27. *Section 85-2-122, MCA, is amended to read:*

"85-2-122. Penalties. (1) Except as provided in 85-2-410(6), a person who violates or refuses or neglects to comply with the provisions of 85-2-114, any order of the department, or any rule of the department is subject to a civil penalty not to exceed \$1,000 per violation. Each day of violation constitutes a separate violation.

(2) Except as provided in subsection (3), fines collected by the department or the water ~~a district~~ court under subsection (1) must be deposited in the account established in 85-2-318 for use by the department in the enforcement of 85-2-114.

(3) If a fine is collected by an independent action brought by:

(a) the county attorney, the fine must be deposited in the general fund of the county; or

(b) the county attorney with assistance from the attorney general or by the attorney general, the fine must be deposited in the water right enforcement account created in 44-4-1101 and must be used to enforce the provisions of 85-2-114."

{Internal References to 85-2-122:

44-4-1101 85-2-114 85-2-123 85-2-381
85-2-427 85-20-1001}

Section 28. *Section 85-2-123, MCA, is amended to read:*

"85-2-123. Deposit of fees and penalties. Except as provided in 85-2-122 and 85-2-124, all fees and penalties collected under this chapter must be deposited in the water right appropriation account established in 85-2-318. ~~Except for fines collected by a district court under 85-2-122, all penalties or fines imposed by any court other than a justice's court for a violation of this chapter must be deposited in the general fund of the county where the court presides and must be disposed of in the same manner as any other penalty or fine."~~

{Internal References to 85-2-123: None}

Section 29. *Section 85-2-125, MCA, is amended to read:*

"85-2-125. Recovery of costs and attorney fees by prevailing party. (1) If a final decision of the department on an application for a permit or a change in appropriation right is appealed to the Water Court, said district court, ~~the district court~~ may award the prevailing party reasonable costs and attorney fees.

(2) The party obtaining injunctive relief in an action to enforce a water right must be awarded reasonable costs and attorney fees. For the purposes of this section, "enforce a water right" means an action by a party with a water right to enjoin the use of water by a person that does not have a water right."

{Internal References to 85-2-125: None}

Section 30. *Section 85-2-234, MCA, is amended to read:*

"85-2-234. Final decree. (1) The water judge shall, on the basis of the preliminary decree and any supplemental preliminary decree, on the basis of any hearing that may have been held, and on final resolution of all issue remarks, as defined in 85-2-250, enter a final decree affirming or modifying the preliminary decree.

(2) The terms of a compact negotiated and ratified under 85-2-702 must be included in the final decree without alteration unless an objection is sustained pursuant to 85-2-233. However, the court may not alter or amend any of the terms of a compact except with the prior written consent of the parties in accordance with applicable law.

(3) The final decree must establish the existing rights and priorities within the water judge's jurisdiction of persons who have filed a claim in accordance with 85-2-221 and 85-2-222, of persons required to file a declaration of existing rights in the Powder River basin pursuant to an order of the department or a district court issued under sections 8 and 9 of Chapter 452, Laws of 1973, and of any federal agency or Indian tribe possessing water rights arising under federal law, required by 85-2-702 to file claims.

(4) The final decree must establish, in a form determined to be appropriate by the water judge, one or more tabulations or lists of all water rights and their relative priorities.

(5) The final decree must state the findings of fact, along with any conclusions of law, upon which the existing rights and priorities of each person, federal agency, and Indian tribe named in the decree are based.

(6) For each person who is found to have an existing right arising under the laws of the state of Montana, the final decree must state:

(a) the name and post-office address of the owner of the right;

(b) the amount of water included in the right, as follows:

(i) by flow rate for direct flow rights, such as irrigation rights;

(ii) by volume for rights, such as stockpond and reservoir storage rights, and for rights that are not susceptible to measurement by flow rate; or

(iii) by flow rate and volume for rights that a water judge determines require both volume and flow rate to adequately administer the right;

(c) the date of priority of the right;

(d) the purpose for which the water included in the right is used;

(e) the place of use and a description of the land, if any, to which the right is appurtenant;

(f) the source of the water included in the right;

(g) the place and means of diversion;

(h) the inclusive dates during which the water is used each year;

(i) any other information necessary to fully define the nature and extent of the right.

(7) For each person, tribe, or federal agency possessing water rights arising under the laws of the United States, the final decree must state:

- (a) the name and mailing address of the holder of the right;
- (b) the source or sources of water included in the right;
- (c) the quantity of water included in the right;
- (d) the date of priority of the right;
- (e) the purpose for which the water included in the right is currently used, if at all;
- (f) the place of use and a description of the land, if any, to which the right is appurtenant;
- (g) the place and means of diversion, if any; and
- (h) any other information necessary to fully define the nature and extent of the right, including the terms of any compacts negotiated and ratified under 85-2-702.

(8) Clerical mistakes in a final decree may be corrected at any time on the initiative of the water judge or on the petition of any person who possesses a water right. The water judge shall order the notice of a correction proceeding that the judge determines to be appropriate to advise all persons who may be affected by the correction. An order of the water judge making or denying a clerical correction is subject to appellate review.

(9) As provided under 3-7-212, the water court shall retain jurisdiction over the administration and enforcement of a final decree."

{Internal References to 85-2-234:

85-2-141	85-2-222	85-2-231	85-20-401
85-20-601	85-20-701	85-20-801	85-20-901
85-20-1001	85-20-1101	85-20-1201	85-20-1301
85-20-1401	85-20-1501	85-20-1901}	

Section 31. Section 85-2-309, MCA, is amended to read:

"85-2-309. Hearings on objections -- jurisdiction. (1) If the department determines that an objection to an application for a permit under 85-2-311 or change in appropriation right under 85-2-402 states a valid objection, it shall hold a contested case hearing, pursuant to Title 2, chapter 4, part 6, on the objection within 90 days from the date set by the department for the filing of objections after serving notice of the hearing by first-class mail upon the applicant and the objector, unless the department certifies an issue to the water~~district~~ court for determination by a water judge under subsection (2). The department may consolidate hearings if more than one objection is filed to an application. The department may extend the 90-day deadline for good cause shown or upon request of the applicant and all objectors. The department shall file in its records proof of the service by affidavit of the department.

(2) (a) At any time prior to commencement or before the conclusion of a hearing as provided in subsection (1), the

department may in its discretion certify to the Water
~~district~~ court all factual and legal issues involving the
adjudication or determination of the water rights at issue
in the hearing, including but not limited to issues of
abandonment, quantification, or relative priority dates.
Certified controversies must be given priority by a water
judge over all other adjudication matters.

(b) If the department fails to certify an issue as
provided in this section after a timely request by a party
to the hearing, the department shall include its denial to
certify as part of the record of the hearing.

(c) Upon determination of the issues certified to it by
the department, the court shall remand the matter to the
department for further processing of the application under
this chapter.

(3) Subsection (2) does not apply in the case of a matter
considered at a hearing under this section pursuant to 85-
2-316 or 85-2-322."

{Internal References to 85-2-309:

3-7-101	3-7-223	3-7-224	3-7-501
3-7-502	85-2-102 *	85-2-314 *	85-2-316 *
85-2-322	85-2-402	85-2-436 *	85-20-1901 *}

Section 32. Section 85-2-313, MCA, is amended to
read:

"85-2-313. Provisional permits and change authorizations.

(1) A provisional permit or change in appropriation right issued prior to a final determination of existing water rights pursuant to 85-2-234 is ~~provisional and is~~ subject to that final ~~determination~~ decree. ~~Upon petition, the amount of the appropriation granted in a provisional permit must be reduced, modified, or revoked by the department following a show cause hearing in which it is determined that reduction, modification, or revocation is necessary to protect and guarantee existing water rights determined in the final decree. Because a provisional permit is issued on a reasonable determination of legal availability under 85-2-311(1)(b), in a show cause hearing under this section, legal availability must be determined on a consideration of the final decree in the affected basin or subbasin. A person may not obtain any vested right to an appropriation obtained under a provisional permit by virtue of construction of diversion works, purchase of equipment to apply water, planting of crops, or other action where the provisional permit or change in appropriation right would have been denied or modified if the final decree had been available to the department.~~

(2) Within 120 days of issuance of a final decree in which a provisional permit or change in appropriation right

is located, the owner of an existing water right contained in that final decree may file a petition requesting that the department modify or revoke the provisional permit or change in appropriation right. A correct and complete petition must be on a form provided by the department.

3) The department may propose to modify or revoke a provisional permit if it determines based on a petition filed pursuant to subsection 2 that the action is:(a) necessary for the petitioner to reasonably exercise the existing water right as determined in the final decree; and (b) the provisional permit would have been denied or modified if the final decree had been available to the department because: i) the provisional permit will adversely affect the petitioner's water rights as established in the final decree; or ii) the final decree establishes that water was not legally available in the amount of the provisional permit.

4) The department may propose to modify or revoke a change in appropriation if it determines based on a petition filed pursuant to subsection 2 that the change in appropriation right would have been denied or modified if the final decree had been available to the department.

5) The department shall provide written notice of its determination to deny a petition, or determination to

modify or revoke a provisional permit or change in appropriation right. Within thirty days of the notice, the petitioner, permittee, or holder of the change in appropriation right may request a hearing pursuant to 85-2-314 to show cause why the proposed action should not be taken. If a request for show cause hearing is not requested the determination becomes final.

{Internal References to 85-2-313:
85-2-101 85-2-102 * 85-2-401}

Section 33. Section 85-2-314 , MCA, is amended to read:

"85-2-314. Revocation or modification of permit or change in appropriation right. (1) (a) If the work on an appropriation is not commenced, prosecuted, or completed within the time stated in the permit or an extension of the time stated in the permit, if the water is not being applied to the beneficial use contemplated in the permit or change in appropriation right, ~~or~~ if the permit or change in appropriation right is otherwise not being followed, or as provided for by 85-2-315, the department may, after notice, require the permittee or the holder of the change in appropriation right to show cause why the permit or change in appropriation right should not be modified or revoked.

(b) If the permittee or holder of the change in appropriation right fails to show sufficient cause, the department may modify or revoke the permit or change in appropriation right.

(2) (a) A permittee or holder of a change in appropriation right may petition the department to modify or remove a condition of approval or reduce the amount of the permit or change authorization.

(b) The petition must be submitted on a form designated by the department, is subject to the criteria of 85-2-311 and 85-2-402, and must be processed in the same manner as an application made pursuant to 85-2-302, 85-2-307 through 85-2-309, and 85-2-310(1) through (5) except that:

(i) the department may waive the public notice of a preliminary determination to grant the petition if the department finds, on the basis of information reasonably available to it, that the petition as proposed in the application will not adversely affect the rights of other appropriators;

(ii) if the department issues a preliminary determination to grant the petition and waives public notice, the determination becomes final;

(iii) the department may condition a preliminary determination to grant the petition in order to meet the criteria under 85-2-311 and 85-2-402; and

(iv) a preliminary determination to deny a petition is final. Denial of a petition does not affect the permit or change authorization.

(3) The person requesting a show cause hearing pursuant to 85-2-314 must show cause by a preponderance of the evidence why the proposed action should not be taken. If the petitioner, permittee or holder of the change in appropriation right fails to show sufficient cause, the department's determination becomes final. "

*{Internal References to 85-2-314:
85-2-102 * 85-20-901 85-20-1901}*

Section 34. Section 85-2-315 , MCA, is amended to read:

"85-2-315. Verification and Certificate of water right for provisional permit and change in appropriation right.

1) A notice of completion shall be filed with the department upon ~~Upon~~ actual application of water to the proposed beneficial use within the time allowed, ~~the permittee shall notify the department that the appropriation has been completed by a provisional permit or change in appropriation right.~~ change in appropriation right. The notification must

contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(2) Following issuance of the final decree in the basin in which a provisional permit or change in appropriation right is located the department shall review the certified statement and may ~~then inspect the appropriation, and if it~~ determines that whether the appropriation has been completed in substantial accordance with the provisional permit change in appropriation right.

(3) (a) If the department determines that the provisional permit has been completed in substantial compliance with the terms of the permit and no petition has been filed pursuant to 85-2-313, it shall issue a certificate of water right for the provisional permit.

(b) If the department determines that the provisional permit has not been completed in substantial compliance with the terms thereof the department may, after notice, require the permittee to show cause why the provisional permit should not be modified or revoked pursuant to 85-2-314.

(c) The department shall issue a certificate of water right for the provisional permit as proposed in the notice if the permittee fails to show cause why the permit or

change in appropriation right should not be modified or
revoked.

4) Following issuance of the final decree in the basin in
which a change in appropriation right is located, the
department shall:

(a) review the certified statement and may inspect the
appropriation to determine whether the appropriation has
been completed in substantial accordance with the
provisional permit; and

(b) if the change in appropriation right involves an
existing water right adjudicated by the final decree,
determine whether the final decree alters an element of the
existing water right in a manner that would have required
denial or modification of the change in appropriation right
if the final decree had been available to the department.

(5) (a) If the department determines that the change in
appropriation right has been completed in substantial
compliance with 4(a) and 4(b), and no petition has been
filed pursuant to 85-2-313, it shall issue a certificate of
water right for the change in appropriation right.

(b) If the department determines that the change in
appropriation right has not been completed in substantial
compliance with 4(a) or 4(b), the department may, after
notice, require the holder of the change in appropriation

right to show cause why the change in appropriation right should not be modified or revoked pursuant to 85-2-314.

6) If a show cause hearing is conducted pursuant to this part or 85-2-313, the department shall issue a certificate of water right for the provisional permit or change in appropriation right as proposed in the notice or determined in the show cause hearing.

7) The original of the certificate shall be sent to the permittee or holder of the change in appropriation right, and maintained in the centralized database~~a duplicate shall be kept in the office of the department in."~~

{Internal References to 85-2-315:
85-20-501}

Section 35. *Section 85-2-405, MCA, is amended to read:*

"85-2-405. Procedure for declaring appropriation rights abandoned. (1) When the department has reason to believe that an appropriator may have abandoned an appropriation right under 85-2-404 or when another appropriator in the opinion of the department files a valid claim that the appropriator has been or will be injured by the resumption of use of an appropriation right alleged to have been

abandoned, the department shall petition the water district court that determined the existing rights in the source of the appropriation in question to hold a hearing to determine whether the appropriation right has been abandoned. Proceedings under this section must be conducted in accordance with the Montana Rules of Civil Procedure, and appeal must be taken in accordance with the Montana Rules of Appellate Procedure.

(2) An affected water user may petition the water divisions court to hold a hearing to determine whether a water right has been abandoned under 85-2-404.

(3)-(2) Proceedings under this section must be conducted in accordance with the Montana Rules of Civil Procedure, and appeal must be taken in accordance with the Montana Rules of Appellate Procedure.

(4)-(3) At the hearing, the initial burden of proof is on the petitioner department, which shall establish by a preponderance of the evidence that the appropriation has been abandoned under 85-2-404.

(5)-(3) The determination that the water right is abandoned shall include an order to the Department to update its centralized records system of the court must be appended to the final decree. The department shall keep a copy of the determination in its office in Helena."

{Internal References to 85-2-405: None}

Section 36. *Section 85-2-406, MCA, is amended to read:*

"85-2-406. Water ~~District~~ court supervision of water distribution. The Water Court shall retain jurisdiction over the administration and enforcement of any final judgement or decree issued by the water court including those under Title 85, Chapter 20. (1) The water ~~district~~ courts shall supervise the distribution of water among all appropriators. This supervisory authority includes the supervision of all water commissioners concerning a water distribution controversy ~~appointed prior or subsequent to July 1, 1973.~~ The supervision must be governed by the principle that first in time is first in right.

(2) (a) The water ~~A district~~ court may order the distribution of water pursuant to the terms of the applicable governing decree, and by the terms of any applicable certificate of water right, permit, state water reservation, compact, or change in appropriation right. ~~a district court~~ A decree entered prior to July 1, 1973, is enforceable as to the valid claims filed pursuant to 85-2-221 that are based upon an existing right contained in such

decree, until an enforceable decree is entered under part 2 of this chapter or until the applicable existing rights have ~~matter has~~ been adjudicated under the procedure set forth in subsections (2) (b), (3), or (4).

(b) (i) When a water distribution controversy arises upon a source of water in which not all existing rights have been conclusively determined according to part 2 of this chapter, any party to the controversy may petition the water court for a ~~district court to certify the matter to the chief water judge. If a certification request is made, the district court shall certify to the chief water judge the determination of the existing rights that are involved in the controversy according to part 2 of this chapter.~~

(ii) The presiding water judge ~~district court from which relief is sought~~ shall retain exclusive jurisdiction to grant injunctive or other relief that is necessary and appropriate pending adjudication of the existing water rights certified to the water judge.

(iii) Controversies arising under this subsection ~~Certified controversies~~ must be given priority over all other adjudication matters.

(iv) After determination of the matters ~~certified~~, the water judge shall issue a decision ~~return the decision to the district court~~ with a tabulation or list of the

existing rights and their relative priorities that are
subject to the water distribution controversy.

(3) A controversy between appropriators concerning a
water right ~~from a source~~ that has been the subject of a
final decree under part 2 of this chapter must be settled
by the water judge presiding over the applicable water
division ~~district court~~. The order of the water judge
~~district court~~ settling the controversy may not alter the
water rights ~~the existing rights and priorities established~~
~~in the final decree~~ except to the extent the court alters
rights based upon abandonment, waste, or illegal
enlargement or change of right. ~~In cases involving permits~~
~~issued by the department, the court may not amend the~~
~~respective rights established in the permits or alter any~~
~~terms of the permits unless the permits are inconsistent or~~
~~interfere with rights and priorities established in the~~
~~final decree.~~ The order settling the controversy shall
include an order to the Department to update its
centralized records system for any altered water right.
~~must be appended to the final decree, and a copy must be~~
~~filed with the department.~~ The department must be served
with process in any proceeding under this subsection, and
the department may, in its discretion, intervene in the
proceeding.

(4) A temporary preliminary decree or preliminary decree or a portion of a temporary preliminary decree or preliminary decree as modified after objections and hearings is enforceable and administrable according to its terms. If an action to enforce a temporary preliminary decree or preliminary decree is commenced, the presiding water judge shall ~~upon referral from the district court~~ establish, in a form determined to be appropriate by the chief water judge, one or more tabulations or lists of all existing rights and their relative priorities.

(5) A person whose existing rights and priorities are determined in a temporary preliminary decree or preliminary decree or a person exercising a suspension under 85-2-217 and part 7 of this chapter may appeal a determination made pursuant to subsection (2)."

{Internal References to 85-2-406:
3-1-804 85-2-344 85-20-1001}

Section 37. *Section 85-5-101, MCA, is amended to read:*

"85-5-101. Appointment of water commissioners. (1)

Whenever the rights of persons to use the waters of any stream, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply have been

determined by a decree of a court of competent jurisdiction, including temporary preliminary, preliminary, and final decrees issued by a water judge, it is the duty of the water judge of the applicable Water Court ~~of the district court~~ having jurisdiction ~~of the subject matter~~, upon the application of the owners of at least 15% of the water rights affected by the decree or at least 15% of the flow rate of the water rights affected by the decree, and after reasonable notice of the petition and an opportunity to comment given to all affected water users, in the exercise of the judge's discretion, to appoint one or more commissioners. The commissioners have authority to admeasure and distribute to the parties owning water rights in the source affected by the decree the waters to which they are entitled, according to their rights as fixed by the decree and by any certificates, permits, and changes in appropriation right issued under chapter 2 of this title.

(a) When petitioners make proper showing that they are not able to obtain the application of the owners of at least 15% of the water rights affected or at least 15% of the flow rate of the water rights affected and they are unable to obtain the water to which they are entitled, the water judge of the applicable water division ~~district court~~ having jurisdiction may appoint a water commissioner.

(b) Upon application by any interested person, the water judge having jurisdiction may appoint the applicable district court judge to sit as the water judge to supervise the water commissioner.

(2) When the existing rights of all appropriators from a source or in an area have been determined in a temporary preliminary decree, preliminary decree, or final decree issued under chapter 2 of this title, the water judge of the applicable water division ~~district court~~ may, upon application by both the department of natural resources and conservation and one or more holders of valid water rights in the source, appoint a water commissioner. The water commissioner shall distribute to the appropriators, from the source or in the area, the water to which they are entitled. Upon application by any interested person, the water judge having jurisdiction may appoint the applicable district court judge to supervise the water commissioner.

(3) The department of natural resources and conservation or any person or corporation operating under contract with the department or any other owner of stored waters may petition the water judge having jurisdiction ~~the court~~ to have stored waters distributed by the water commissioners appointed by the water ~~district~~ court. The water court may order the commissioner or commissioners appointed by the

court to distribute stored water when and as released to water users entitled to the use of the water. Upon application by any interested person, the water judge having jurisdiction may appoint the applicable district court judge to supervise the water commissioner.

(4) At the time of the appointment of a water commissioner or commissioners, the water ~~district~~ court shall fix their compensation, require a commissioner or commissioners to purchase a workers' compensation insurance policy and elect coverage on themselves, and require the owners and users of the distributed waters, including permittees, certificate holders, and holders of a change in appropriation right, to pay their proportionate share of fees and compensation, including the cost of workers' compensation insurance purchased by a water commissioner or commissioners. The water judge may include the department in the apportionment of costs if it applied for the appointment of a water commissioner under subsection (2).

(5) Upon the application of the board or boards of one or more irrigation districts entitled to the use of water stored in a reservoir that is turned into the natural channel of any stream and withdrawn or diverted at a point downstream for beneficial use, the water judge having jurisdiction ~~district court of the judicial district where~~

the most irrigable acres of the irrigation district or districts are situated may appoint a water commissioner to equitably admeasure and distribute stored water to the irrigation district or districts from the channel of the stream into which it has been turned. A commissioner appointed under this subsection has the powers of any commissioner appointed under this chapter, limited only by the purposes of this subsection. A commissioner's compensation is set by the appointing water judge and paid by each district and other users of stored water affected by the admeasurement and distribution of the stored water. In all other matters, the provisions of this chapter apply so long as they are consistent with this subsection.

(6) A water commissioner appointed by a water ~~district~~ court is not an employee of the judicial branch, a local government, or a water user.

(7) A water commissioner who fails to obtain workers' compensation insurance coverage required by subsection (4) is precluded from receiving benefits under Title 39, chapter 71, as a result of the performance of duties as a water commissioner."

*{Internal References to 85-5-101:
85-2-381 85-5-102 85-20-1001}*

Section 38. *Section 85-5-102, MCA, is amended to read:*

"85-5-102. Appointment of chief commissioner. When the water judge ~~of the district court~~ appoints two or more commissioners to admeasure and distribute the waters mentioned in 85-5-101, the water judge may appoint one of them as chief commissioner and empower the chief commissioner to exercise direction and control over the other commissioners in the discharge of their duties. The water judge may depose the person appointed as chief commissioner from that position and appoint another as chief commissioner whenever it appears to the judge that better service may be given to the water users by making the change."

{Internal References to 85-5-102: None}

Section 39. *Section 85-5-103, MCA, is amended to read:*

"85-5-103. Oath and bond. Each water commissioner appointed by the court shall subscribe and file with the Water Court administrator ~~clerk of the district court~~ an oath of office before commencing the discharge of duties as commissioner and shall file with the Water Court

administrator ~~clerk~~ a bond executed by the commissioner, with two or more sureties, in a sum that the water judge ~~of the court~~ may designate, to ensure the faithful discharge of the commissioner's duties."

{Internal References to 85-5-103: None}

Section 40. Section 85-5-104 , MCA, is amended to read:

"85-5-104. Term of office. A water commissioner holds office for the time during the irrigation season of each year that may be designated by the water judge in the order making the appointment. The water judge may fix the date of the commencement of the term and may, in in the judge's discretion or when requested in writing by at least three persons entitled to the use of the waters, change the term for closing of the commissioner's service."

{Internal References to 85-5-104: None}

Section 41. Section 85-5-106, MCA, is amended to read:

"85-5-106. Maintenance and repair of ditches or systems. Upon written request of the owners of at least 51% of the water rights in any adjudicated ditch or single water system, the water judge ~~of the district court~~ may empower

the commissioner to maintain and keep in reasonable repair such water ditch or water system at the expense of the owners thereof, and for such purposes the commissioner shall have authority to enter and work upon any ditch, canal, aqueduct, or other source of conveying the waters affected by the decree and the right-of-way thereof and to visit, inspect, and adjust all headgates or other means of distribution of such waters."

{Internal References to 85-5-106: None}

Section 42. *Section 85-5-107, MCA, is amended to read:*

"85-5-107. Record of distribution of water. (1) Each water commissioner shall keep a daily record, unless a different recording schedule is ordered by the water district judge, of the amount of water distributed to each water user and shall file a summary of the record with the Water Court Administrator ~~clerk of the court~~ monthly or seasonally, at the discretion of the water district judge during the judge's term of service. The report must show in detail the total amount of water distributed to each water user during the month or the season and the cost of distributing the water, based upon the water commissioner's

or commissioners' daily salary, other costs of the water commissioner or commissioners approved by the water district judge, and the proportionate amount of water distributed. When two or more water commissioners serve under the same decree or decrees by order of the water judge, they may file a joint summary of their records with the Water Court Administrator ~~clerk of the court~~, or the chief commissioner, if one has been appointed by the water judge, may file a summary on behalf of all of them.

(2) If the water district court judge determines that it is necessary to establish a billing cycle prior to a distribution season, as provided in 85-5-204, the report or reports must serve as the basis for the amounts billed."

{Internal References to 85-5-107:
85-5-201 85-5-204}

Section 43. Section 85-5-108 , MCA, is amended to read:

"85-5-108. Authority and arrest power. For the purposes of carrying out the provisions of Title 85, chapter 5, parts 1 through 3, each commissioner appointed by the water court has the authority to enter upon any ditch, canal, aqueduct, or other source for conveying the waters affected by the decree and to visit, inspect, and adjust all headgates or other means of distributing the waters and has

the same powers as a sheriff or constable to arrest any person interfering with the distribution made by the commissioner, to be dealt with according to law."

{Internal References to 85-5-108: None}

Section 44. Section 85-5-109, MCA, is amended to read:

"85-5-109. Failure to perform duty as contempt of court.

If a commissioner fails to perform any of the duties imposed upon the commissioner by the order of the water judge ~~of the district court~~, the commissioner is guilty of contempt of court."

{Internal References to 85-5-109: None}

Section 45. Section 85-5-110, MCA, is amended to read:

"85-5-110. Appointment of water mediators -- duties. (1)

Except as provided in 85-20-1902, the water judge ~~of the district court~~ may appoint a water mediator to mediate a water controversy in a decreed or nondecreed basin under the following circumstances:

(a) upon request of the governor;

(b) upon petition by at least 15% of the owners of water rights in a decreed or nondecreed basin; or

(c) in the discretion of the water judge ~~district court~~
~~having jurisdiction.~~

(2) A water mediator appointed under this section may:

(a) discuss proposed solutions to a water controversy
with affected water right holders;

(b) review options related to scheduling and coordinating
water use with affected water right holders;

(c) discuss water use and water needs with persons and
entities affected by the existing water use;

(d) meet with principal parties to mediate differences
over the use of water; and

(e) hold public meetings and conferences to discuss and
negotiate potential solutions to controversies over use of
water.

(3) If the governor requests or a state agency petitions
for a water mediator, the governor or agency shall pay all
or a majority of the costs of the water mediator as
determined equitable by the water judge ~~district court~~
~~having jurisdiction.~~

(4) The governor may use funds appropriated under 75-1-
1101 to pay the costs of a water mediator.

(5) This section does not allow a water mediator to
require any valid water right holder to compromise or
reduce any of the holder's existing water rights.

(6) If an appropriator voluntarily ceases to use all or part of an appropriation right or voluntarily ceases to use an appropriation right according to its terms and conditions as a result of the efforts of a mediator appointed under this section, the appropriator may not be considered to have abandoned all or any portion of the appropriation right."

{Internal References to 85-5-110: None}

Section 46. *Section 85-5-111, MCA, is amended to read:*

"85-5-111. Water commissioner and mediator education. (1)

The department of natural resources and conservation, in cooperation with the Montana supreme court, the Montana water courts, ~~the district courts of Montana,~~ the Montana university system, and other appropriate state, tribal, and federal agencies, shall develop an educational program for water commissioners and mediators that includes:

(a) an annual seminar on commissioner and mediator duties, mediation techniques, and water measuring techniques;

(b) preparation and, as necessary, revision of a water commissioner and mediator manual; and

(c) an outreach program that identifies persons who might serve as water commissioners or mediators.

(2) Unless a water ~~district court~~ judge having jurisdiction determines otherwise, a water commissioner appointed pursuant to 85-5-101 shall complete at least one educational program as provided in subsection (1) prior to administering water."

{Internal References to 85-5-111: None}

Section 47. *Section 85-5-201, MCA, is amended to read:*

"85-5-201. Distribution of water and related expenses.

(1) Each water commissioner appointed by the water judge of the applicable water division ~~district court~~ for the purpose of distributing water has the authority to determine the appropriate quantity and distribute to the parties interested, under a decree, permit, certificate, or change in appropriation right, the water to which those who are parties to the decree or holders of a permit, certificate, or change in appropriation right, or privy to a permit, certificate, or change in appropriation right, are entitled, according to their priority as established by the decree, permit, certificate, or change in appropriation right.

(2) The water commissioner may incur necessary expenses in the making of headgates or dams for the distribution of the waters if the parties fail or refuse to do so. Expenses associated with making headgates or dams for the distribution of water must be assessed against and paid by the party or parties for whom the ditch or ditches were repaired or the dams or headgates were made. In the discretion of the court, the costs or expenses may be assessed against the land upon which or for the benefit of which the expense had been incurred.

(3) (a) At the water ~~district~~ court's discretion, a water commissioner may bill water users prior to the beginning of a distribution season for the purpose of offsetting costs associated with distributing water and water commissioner duties by submitting the information necessary for the billing to the Water Court administrator ~~clerk of the district court~~. A billing issued prior to the beginning of a distribution season:

- (i) must be assessed on a per-user basis;
- (ii) must be based on the report provided for in 85-5-107 for the prior year; and
- (iii) may not exceed 80% of the amount that was provided to the district court pursuant to 85-5-107 for the prior distribution season on a per-user basis.

(b) Upon receipt of the information from the water commissioner, the Water Court administrator ~~clerk of the district court~~ shall proceed as provided in 85-5-204."

{Internal References to 85-5-201: None}

Section 48. *Section 85-5-202, MCA, is amended to read:*

"85-5-202. Repair expenses. The water judge may allow as a charge any expenses necessarily incurred by the water commissioner in the discharge of duties in the employment of extra labor for the repair of dams, headgates, ditches, or flumes when immediate action is necessary to preserve the rights of the parties entitled to the waters of a stream or when the water judge has, in the order appointing the commissioner, required the commissioner to repair ditches and keep in repair necessary headgates, ditches, or flumes. The water commissioner shall report all expenses, and the cost must be taxed against the party or parties for whose benefit the expenses were incurred. In the discretion of the court, the costs or expenses may be assessed against the land upon which or for the benefit of which the expense had been incurred."

{Internal References to 85-5-202: None}

Section 49. Section 85-5-203, MCA, is amended to read:

"85-5-203. Telephone expenses. The water judge may also allow as a charge reasonable expenses incurred by a water commissioner in telephoning to the water judge for instructions in cases of emergency. When there are two or more commissioners acting under the water judge's order, reasonable expenses incurred in communicating with each by telephone or with the water judge of the water ~~district~~ court, in order to carry on the distribution of the waters harmoniously and in accordance with the decree, shall be deemed a necessary expense. These expenses shall be reported by the water commissioner or commissioners at the close of the season and shall be taxed against all the water users affected by the decree or decrees ratably in proportion to the whole amount of water distributed to them during the season."

{Internal References to 85-5-203: None}

Section 50. Section 85-5-204 , MCA, is amended to read:

"85-5-204. Apportionment of fees and expenses. (1) Upon the filing of the report by the water commissioner or water

commissioners, the Water Court administrator ~~clerk of court~~ shall notify by letter each person mentioned in the report:

(a) of the amount the water user is made liable for by the report;

(b) that objections to the report and the amount taxed against the water user may be made by any person interested in the report or the amount assessed against the water user within 20 days after the date of the mailing of the notice; and

(c) that, unless objections are filed, an order will be made by the water judge ~~of the district court~~ finally fixing and determining the amount due from each of the water users.

(2) The affidavit of the Water Court administrator ~~clerk~~ that the Water Court administrator ~~clerk~~ has mailed a notice to each person mentioned in the report at the person's last-known post-office address, in the usual manner, must be considered prima facie evidence that the person received the notice provided for in this section.

(3) At the discretion of the water ~~district~~ judge, the water commissioner may issue a bill prior to the beginning of a distribution season for the purpose of offsetting costs associated with distributing water and water commissioner duties by submitting the information necessary

for the billing to the Water Court administrator ~~clerk of the district court~~. The bill for each water user may not exceed 80% of the amount that was provided to the water district ~~court~~ pursuant to 85-5-107 for the prior distribution season.

(4) If the cost of distributing water during a distribution season is less than the amount that was collected through a bill issued prior to a distribution season, the water commissioner shall refund the money to the water user based on the amount of water that the water user received during the distribution season. The water commissioner shall submit a refund report, along with proof that any refunds were issued, to the Water Court administrator ~~clerk of district court~~ for filing."

{Internal References to 85-5-204:
85-5-107 85-5-201}

Section 51. Section 85-5-205, MCA, is amended to read:

"85-5-205. Objections to expenses -- hearing. At the expiration of the 20 days' notice, as provided for in the preceding section, if objections to said report have been filed or a motion to retax the same has been made, the water court ~~or judge~~ shall fix a time for the hearing of such objections or motion to retax, which time of hearing

shall be as soon as the water judge ~~or a court~~ can conveniently hear the same. Any person objecting to said report shall be entitled to at least 5 days' notice of the date and time of such hearing. At such hearing the water ~~court or~~ judge shall hear and determine the motion or objections and shall make an order fixing and determining the amount found due from each of said water users to such commissioner or commissioners. In case no objections are filed within the 20 days, as hereinbefore provided for, such order shall be made as a matter of course, and in either case said order shall be final determination of the matter."

{Internal References to 85-5-205: None}

Section 52. Section 85-5-206 , MCA, is amended to read:

"85-5-206. Effect of order fixing fees. After the order of the water court fixing the fees and compensation and expenses of the water commissioner is final, the order has the force and effect of a judgment against the person to whom the water was or will be distributed and for whose benefit it was used or will be used. When the expenses of a commissioner or commissioners has been assessed against the land for which the service of the commissioner or

commissioners has been rendered, the assessment is a lien against the land. The lien has the same effect as a judgment. The lien may be executed in the same manner as a judgment upon order of the water court. The water commissioner, at the water commissioner's discretion, may withhold further determinations of quantity or distribution of water to any person entitled to the water until the person has paid all fees, compensation, and expenses of the water commissioner or commissioners fixed by the court and apportioned and charged to the person, including bills sent prior to the beginning of a distribution season. The commissioner may withhold the determination of quantity and distribution of water from any land against which there exists any lien that is the result of lack of payment pursuant to this section until the lien has been fully discharged."

{Internal References to 85-5-206: None}

Section 53. *Section 85-5-301, MCA, is amended to read:*

"85-5-301. Complaint by dissatisfied user. (1) A person owning or using any of the waters of the stream or ditch or extension of the ditch who is dissatisfied with the method

of distribution of the waters of the stream or ditch by the water commissioner or water commissioners and who claims to be entitled to more water than the person is receiving or to a right prior to that allowed the person by the water commissioner or water commissioners may file a written complaint, duly verified, setting forth the facts of the claim in the applicable water division.

(2) Upon receipt of the complaint, the complaint shall be assigned by the chief water judge to a judge who is not supervising the water commissioner against whom the complaint is filed. The assigned judge ~~the judge~~ shall fix a time for the hearing of the petition and shall direct that notice be given to the parties interested in the hearing as the water judge considers necessary. At the time fixed for the hearing, the water judge shall hear and examine the complainant and other parties who appear to support or resist the claim and examine the water commissioner or water commissioners and witnesses regarding the charges contained in the complaint.

(3) Upon the determination of the hearing, the water judge shall make findings and issue an order that the water judge considers just and proper. If it appears to the water judge that the water commissioner or water commissioners have not properly distributed the water according to the

provisions of the decree, permit, certificate, or change in appropriation right, the water judge shall give the proper instructions for distribution of the water.

(4) The water judge may remove any water commissioner and appoint a new water commissioner if the water judge determines that the interests of the parties in the waters mentioned in the decree, permit, certificate, or change in appropriation right will be best served by appointing a new water commissioner. If it appears to the water judge that the water commissioner has willfully failed to perform the water commissioner's duties, the water commissioner may be proceeded against for contempt of court, as provided in contempt cases. The water judge shall make an order regarding the payment of costs of the hearing that the water judge determines is just and proper."

{Internal References to 85-5-301:
3-7-311 85-20-1001}

Section 54. Section 85-5-407, MCA, is amended to read:

"85-5-407. Appointment of water commissioner after final decree. When the rights of the respective parties in an action to the use of the waters flowing in a ditch are adjudicated, the water judge in the applicable water division ~~of the district court having jurisdiction of the~~

~~subject matter~~, upon the application of the owners of at least 10% of the waters of the ditch, may, in the exercise of the judge's discretion, appoint a water commissioner to divide, apportion, and distribute the waters of the ditch to the respective parties according to their respective rights as set forth in the decree. When a commissioner is appointed under the provisions of this chapter to apportion and distribute the waters of the stream from which the water flowing in a ditch is taken, the commissioner shall, when directed by the judge or court, apportion and distribute the waters of the ditch according to the decree by which the rights of the respective owners were adjudicated."

{Internal References to 85-5-407: None}

Section 55. *Section 2-4-702, MCA, is amended to read:*

"2-4-702. ~~(Temporary)~~—Initiating judicial review of contested cases. (1) (a) Except as provided in 75-2-213 and 75-20-223, a person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final written decision in a contested case is entitled to judicial review under this chapter. This section does not limit use of or the scope of judicial review available

under other means of review, redress, relief, or trial de novo provided by statute.

(b) A party who proceeds before an agency under the terms of a particular statute may not be precluded from questioning the validity of that statute on judicial review, but the party may not raise any other question not raised before the agency unless it is shown to the satisfaction of the court that there was good cause for failure to raise the question before the agency.

(2) (a) Except as provided in 75-2-211, 75-2-213, and subsections (2) (c) and (2) (e) of this section, proceedings for review must be instituted by filing a petition in the water ~~district~~ court within 30 days after service of the final written decision of the agency or, if a rehearing is requested, within 30 days after the written decision is rendered. Except as otherwise provided by statute, subsection (2) (d), or subsection (2) (e), the petition must be filed in the water division ~~district court for the~~ ~~county~~ where the petitioner resides or has the petitioner's principal place of business or where the agency maintains its principal office. Copies of the petition must be promptly served upon the agency and all parties of record.

(b) The petition must include a concise statement of the facts upon which jurisdiction and venue are based, a

statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified in 2-4-704(2) upon which the petitioner contends to be entitled to relief. The petition must demand the relief to which the petitioner believes the petitioner is entitled, and the demand for relief may be in the alternative.

(c) If a petition for review is filed pursuant to 33-16-1012(2)(c), the workers' compensation court, rather than the water ~~district~~ court, has jurisdiction and the provisions of this part apply to the workers' compensation court in the same manner as the provisions of this part apply to the water ~~district~~ court.

(d) If a petition for review is filed challenging a licensing or permitting decision made pursuant to Title 75 or Title 82, the petition for review must be filed in the county where the facility is located or proposed to be located or where the action is proposed to occur.

(e) (i) A party who is aggrieved by a final decision on an application for a permit or change in appropriation right filed under Title 85, chapter 2, part 3, may petition the ~~district court or the water court~~ for judicial review of the decision. ~~If a petition for judicial review is filed in the water court, the water court rather than the district court has jurisdiction and the provisions of this~~

~~part apply to the water court in the same manner as they apply to the district court. The time for filing a petition is the same as provided in subsection (2) (a).~~

~~(ii) If more than one party is aggrieved by a final decision on an application for a permit or change in appropriation right filed under Title 85, chapter 2, part 3, the district court where the appropriation right is located has jurisdiction. If more than one aggrieved party files a petition but no aggrieved party files a petition in the district court where the appropriation right is located, the first judicial district, Lewis and Clark County, has jurisdiction.~~

~~(iii) If a petition for judicial review is filed in the district court, the petition for review must be filed in the district court in the county where the appropriation right is located.~~

(3) Unless otherwise provided by statute, the filing of the petition may not stay enforcement of the agency's decision. The agency may grant or the reviewing court may order a stay upon terms that it considers proper, following notice to the affected parties and an opportunity for hearing. A stay may be issued without notice only if the provisions of 27-19-315 through 27-19-317 are met.

(4) Within 30 days after the service of the petition or within further time allowed by the water court, the agency shall transmit to the water ~~reviewing~~ court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be required by the court to pay the additional costs. The water court may require or permit subsequent corrections or additions to the record. (*Terminates September 30, 2025-- sec. 6, Ch. 126, L. 2017.*)

~~**2-4-702.** (*Effective October 1, 2025*) **Initiating judicial review of contested cases.** (1) (a) Except as provided in 75-2-213 and 75-20-223, a person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final written decision in a contested case is entitled to judicial review under this chapter. This section does not limit use of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by statute.~~

~~(b) A party who proceeds before an agency under the terms of a particular statute may not be precluded from questioning the validity of that statute on judicial review, but the party may not raise any other question not~~

~~raised before the agency unless it is shown to the satisfaction of the court that there was good cause for failure to raise the question before the agency.~~

~~(2) (a) Except as provided in 75-2-211, 75-2-213, and subsection (2) (c) of this section, proceedings for review must be instituted by filing a petition in district court within 30 days after service of the final written decision of the agency or, if a rehearing is requested, within 30 days after the written decision is rendered. Except as otherwise provided by statute or subsection (2) (d), the petition must be filed in the district court for the county where the petitioner resides or has the petitioner's principal place of business or where the agency maintains its principal office. Copies of the petition must be promptly served upon the agency and all parties of record.~~

~~(b) The petition must include a concise statement of the facts upon which jurisdiction and venue are based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified in 2-4-704(2) upon which the petitioner contends to be entitled to relief. The petition must demand the relief to which the petitioner believes the petitioner is entitled, and the demand for relief may be in the alternative.~~

~~(c) If a petition for review is filed pursuant to 33-16-1012(2)(c), the workers' compensation court, rather than the district court, has jurisdiction and the provisions of this part apply to the workers' compensation court in the same manner as the provisions of this part apply to the district court.~~

~~(d) If a petition for review is filed challenging a licensing or permitting decision made pursuant to Title 75 or Title 82, the petition for review must be filed in the county where the facility is located or proposed to be located or where the action is proposed to occur.~~

~~(3) Unless otherwise provided by statute, the filing of the petition may not stay enforcement of the agency's decision. The agency may grant or the reviewing court may order a stay upon terms that it considers proper, following notice to the affected parties and an opportunity for hearing. A stay may be issued without notice only if the provisions of 27-19-315 through 27-19-317 are met.~~

~~(4) Within 30 days after the service of the petition or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing~~

~~to stipulate to limit the record may be required by the
court to pay the additional costs. The court may require or
permit subsequent corrections or additions to the record."~~

~~{Internal References to 2-4-702:~~

~~1 2 116 2 4 603 18 4 242 39 71 2904 *
49 2 505 53 9 131 *}~~

-END-